to conceive in any other manner how in the propagation of business or economic activity, promoters could dedicate themselves to forming a company, if in so advancing it, they are put under severe constraint and anxiety as to whether their act would ultimately be sanctioned by it even after it has been incorporated and the directors appointed, when evidently the reason for them being allowed in law to exist after the company is incorporated is evidently to enable the company to get itself adequately started which without them, it could not. If we accept, therefore, the principle of ratification along those lines, then, clearly, the circumstances point to the company and not the defendant who must, if at all, be held liable for any default because whatever the defendant might have done in relation to the plaintiff, it was with the company that the plaintiff was dealing. Evidence showed that it was to the company that the plaintiff had applied for the allotment of shares. It was in the name of the company that the cheques were made out by the plaintiff. That it was in the company's account that the defendant credited the amount in the bank. It was the company's Managing Director who instructed that the share certificate be issued to the plaintiff. Under those circumstances, it is difficult to resist the conclusion that the plaintiff, to all accounts, had treated the company, and not the defendant, as being his principal and *vice versa*. It was the company who had adopted or ratified the contract and therefore, it was the company who should be the party to the suit and not the defendant.

But, even assuming that the principle of ratification does not apply to a contract entered into by a promoter after its incorporation, it still does not appear that the defendant can be held liable. According to the defendant, she was a director in June, 1973. The crucial period in the claim was August 1, 1973, i.e. the date when money had passed hands and the contract entered. That being essentially the case, then it must still be the company who must be held liable and not the defendant because the company had by the time of the contract been incorporated and the defendant was one of its directors. If the defendant acted for the company in the contract, then she must have done so in her capacity as a director. It is settled law that a director is an agent of a company. (*Halsbury's* Vol. 6, 3rd ed. page 421 para 814).

I would, therefore, in the circumstances, dismiss the claim with costs.

Claim dismissed.

Solicitors: *S. Sivasubramanian; Ten Chin Yong & Appaduray.*

SYED ALWI v. DEWAN BAHASA DAN PUSTAKA

[O.C.J. (Vohrah J.) September 1, 1979]
[Kuala Lumpur — Civil Suit No. 2120 of 1978]

Copyright — Declaration of ownership of copyright in play and that defendants might publish it — Agreement to be entered into relating to copyright and payment of royalty — No formal agreement entered into — Play published by defendants — Infringement of copyright — Copyright Act, 1969, ss. 8(1), 13(3) & 14.

In this case the plaintiff signed a declaration acknowledging the receipt of the 1974 literature prize money awarded by the defendants in respect of a play written by him and declaring his ownership of the copyright of the work and agreeing that the defendants might publish it. He also undertook in the declaration to enter into an agreement with the defendants relating to copyright and the payment of royalty. No formal agreement was signed but the play was published by the defendants. The plaintiff claimed damages and an injunction.

Held: in the circumstances the plaintiff's copyright had been infringed by the defendants. The defendants, their servants or agents should be restrained from further publishing or distributing the plaintiff's work and they should pay $10,000 damages and costs to the plaintiff.

CIVIL SUIT.

Tan Jin Chor for the plaintiff.

Halim Ismail for the defendants.

Vohrah J. (delivering oral judgment): The following facts are not disputed. The plaintiff on August 2, 1975 signed the declaration, AB-12, acknowledging the receipt of the 1974 literature prize money of $3,000 awarded by the Dewan Bahasa dan Pustaka in respect of his play, "Tok Perak," and declaring his ownership of the copyright of that work and agreeing that the defendants might publish it. He also undertook in the declaration to enter into an agreement with the defendants relating to copyright and the payment of royalty. No formal agreement in fact was ever signed but sometime in the later part of 1977 the play was published by the defendants.

The plaintiff stated in evidence that the first indication he had that his work had been published by the defendants was when he read a review of the publication in the *Berita Harian* of October 4, 1977. It was only on December 14, 1977 that the defendants notified him by letter (AB-18) of the publication of 5,000 copies of his work. He found missing words, textual errors and errors of punctuation in the work as published. Together with this letter the defendants sent a formal agreement for his signature. The agreement contained a number of provisions to which he took exception and which were contrary to the understanding on certain matters which he had reached with the defendants' then Head of the Literary Development Division, one Kamaluddin Muhammad. This evidence of the plaintiff was unchallenged by the defence. The plaintiff denied that he had ever agreed orally to dispense with the necessity for a written agreement before publication or that he ever agreed to publication before resolution of the terms of the agreement. The only evidence adduced by the defence supported the plaintiff's claim that he had had a discussion with Kamaluddin about his reservations as to its terms and the latter's agreement to accommodate those reservations. Kamaluddin was never produced.

The argument of counsel for the defendants, as I understood it, was that the declaration, AB-12, was a contract which gave the defendants the exclusive right of control over publication of the plaintiff's work. He referred to section 13(3) of the Copyright Act, 1969. But in my understanding the relevance of this subsection is only that an exclusive licence to control the publication of a copyright work, which is an act the doing of which is controlled by copyright pursuant to section 8(1) of the Act, must be in writing to be of effect. A permission or licence granted in writing to a person or body to publish does not, to my mind, confer the exclusive right to control such publication unless it is clearly and unequivocally established that such exclusive right has actually been conferred. The fact that authority to publish is given in writing cannot in itself turn that authority into an exclusive right of control. To produce such a result I consider that specific words to that effect are necessary. In my view, on the evidence before me, it is clear that such an exclusive right of control was never conferred on the defendants. I cannot accept that a person signing such a declaration as AB-12 could as a matter of commonsense have intended to confer by that declaration a right to control the form in which his work might be published irrespective of whether the contents of the work in question were accurately reproduced or otherwise. To do so would in effect be to surrender a right which is fundamental to the ownership of copyright which the plaintiff in AB-12 had specifically declared to be vested in him. I am satisfied on the evidence adduced that the defendants were fully aware of the subsistence of the plaintiff's copyright in the work. In the result I am of the view that the plaintiff's copyright has been infringed by the defendants within the meaning of section 14 of the Copyright Act.

Accordingly, I give judgment in favour of the plaintiff with the following orders: —

(1) The defendants, their servants or agents are hereby restrained from further publishing or distributing the plaintiff's work, "Tok Perak";

(2) The defendants pay damages to the plaintiff in the sum of $10,000; and

(3) The defendants pay the plaintiff the costs of this suit.

Judgment for the plaintiff.

Solicitors: *Tan Jin Chor & Co.; Halim Ismail & Co.*